Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

COMMENTS OF CROWN CASTLE INTERNATIONAL CORP.

Kenneth J. Simon
Senior Vice President and General Counsel

Monica Gambino
Vice President, Legal

Robert Millar
Associate General Counsel

CROWN CASTLE
INTERNATIONAL CORP.
1220 August Drive, #600
Houston, Texas 77057
724-416-2000

June 15, 2017

SUMMARY

The deployment of broadband networks is critical to ensure that the United States maintains its position at the forefront of the technological revolution. Crown Castle is working vigorously to answer the Commission's call to deploy next-generation broadband networks that can meet the intensifying demand for bandwidth across the country. As one of the country's largest independent owners and operators of shared infrastructure, with more than 40,000 towers, nearly 25,000 small cell installations, and over 26,500 miles of fiber, Crown Castle is uniquely positioned to meet the challenge to deploy the networks necessary to power a 21st century economy. Crown Castle uses its fiber optic networks to provide telecommunications services to myriad customers, including wireless carriers, traditional enterprise customers, educational institutions, and government.

Crown Castle urges the Commission to adopt rules that clearly prohibit pole owners from attempting to evade the Commission's intended pole-attachment processes and timelines. As Crown Castle endeavors to both maintain its existing inventory of pole attachments and gain access to poles as a new attacher, the pole attachment process is often complicated by the actions of the companies that own the poles, such as investor-owned utilities and incumbent local exchange carriers (collectively "utilities"). Crown Castle has encountered a growing number of utilities that have exploited their ownership of the poles by requiring new entrants to adhere to a variety of pole attachment standards that effectively deny access to the poles. At the very least, the imposition of these pole attachment standards significantly increases both the cost and time necessary for deployment, thwarting the Commission's efforts to promote efficient broadband deployment.

To reduce inefficiencies currently plaguing the pole attachment timeline, Crown Castle

supports adjustments to the current pole attachment processes. Crown Castle is deeply concerned with a growing number of utilities who require a "pre-application" process before they will accept an application for attachment – thus preventing attaching entities from starting the clock on the Commission's four-stage timeline. Crown Castle suggests the Commission amend its pole rule to follow its wireless Shot Clock and Section 6409 rules to have the timeline start immediately upon submission of an request for access to prevent utilities from evading the timeline imposed by the Commission. To promote efficiency in the pole attachment process, Crown Castle also supports the elimination of the additional 14-day cost estimate phase of the timeline, which is superfluous, unnecessary, and only acts to prolong the pole attachment process. Furthermore, Crown Castle agrees with the Commission that additional transparency is needed and will lead to more efficient pole attachments. To that end, Crown Castle recommends that the Commission require pole owners to provide a breakdown of the pole owners' "actual costs" in of the cost estimate for make-ready work.

As both an existing attaching entity and new entrant, Crown Castle agrees with the Commission that that the make-ready process is a significant part of the attachment and deployment process; and Crown Castle generally supports proposals to expedite make-ready by putting more control into the hands of the party seeking to attach, but only if appropriate safeguards are included. For example, Crown Castle supports the Commission's proposal to adopt as a rule its 2011 "best practice" make-ready period of 30 days or less, but not limited to orders under a certain size. Additionally, Crown Castle urges the Commission to not leave attaching parties without any meaningful remedy when electric utilities fail to perform electric space make-ready in a timely fashion. To that end, Crown Castle suggests the Commission modify its rules to allow attaching parties to use utility-approved contractors for all aspects of

make-ready work, not just communications space make-ready work.

In order to avoid unnecessary delays in the pole attachment process, Crown Castle additionally recommends the Commission support the adoption of automated databases and notifications systems, such as those provided by NJUNS,[1] as a "best practice" for all utilities and attaching parties. Furthermore, since broadband deployment is often thwarted by electric companies refusing to timely activate attachments, Crown Castle urges the Commission to recognize electric power activation of all attachments as part of the make-ready work that must be completed within the Commission's defined timeframe.

Crown Castle supports the evaluation of alternative make-ready processes to help speed access to poles for new entrants, and generally supports in concept the processes that are loosely termed "one-touch" make-ready. However, Crown Castle believes the Commission should carefully evaluate the details of such plans to reach an alternative process that will facilitate deployment while protecting the legitimate interests of existing attachers.

In Crown Castles' experience, despite the Commission's existing requirements, utilities are slow to provide data on available conduit, and some utilities in particular refuse to make their conduit maps available at all. Because of the lack of data on the availability of conduits, Crown Castle is often left with no option other than trial and error when determining where to deploy its broadband infrastructure. Therefore, Crown Castle supports the Commission's proposal to incentivize utilities to make information on available conduit publically available. Access to conduit would also benefit from use of central databases.

Crown Castle has encountered difficulty obtaining access to municipally owned poles, as a threshold matter and also on reasonable terms and conditions. In Crown Castle's experience,

[1] *NJUNS Efficient Utility Communication*, NJUNS, *available at* https://web.njuns.com/ (last visited on June 15, 2017).

some cities are using their control over the public rights of way to force providers to use only city-owned poles, and then enriching themselves with excessive rental demands. Therefore, the Commission should adopt a rule, or at least a declaratory ruling, holding that access to municipal poles is governed by Section 253 of the Act, and that local governments cannot deny access to their poles or impose unreasonable or discriminatory fees for their use.

Crown Castle also agrees with the Commission's view in the *Notice of Inquiry* that some state and local regulations imposing restrictions on broadband deployment may effectively prohibit the provision of telecommunications service. Crown Castle encourages the Commission to use its authority under Section 253 to enact rules that formalize its prior interpretations of Section 253 as well as the many court decisions that followed the Commission's lead.

As a threshold matter, the Commission has the authority to issue rules interpreting and implementing Section 253. As courts have recognized, the Commission's ability, through Section 253(d), to address specific circumstances on a case by case basis does not otherwise preclude the Commission from adopting rules to interpret and implement Section 253. In order to avoid increasing barriers from local government demands and requirements to the deployment of broadband infrastructure, the Commission should adopt rules that interpret and implement Section 253 and, in so doing, effectuate Congress' deregulatory vision. Cases decided by the Commission and the courts shortly after passage of the 1996 Act correctly reflected the intention of Congress to let competition, not parochial local interests and regulations, determine which providers and technologies would successfully compete in the marketplace. However, a few courts have unfortunately issued decisions that conflict with previous cases recognizing that Section 253(a) does not require an insurmountable barrier to entry, and those decisions have

diminished the impact of Section 253 to help promote deployment and competition, as Congress intended.

The deployment of new technologies and competitive services requires a significant capital investment—potentially millions of dollars for each community. Uncertainty resulting from wholly subjective, discretionary, and discriminatory local requirements creates so much risk that companies may not even undertake the investment involved in planning for new services in communities that assume they are authorized to deny consent or impose significant burdens on consent. Therefore, the Commission should clearly define what actions effectively prohibit the provision of telecommunications services to ensure the pro-deployment, pro-competitive, deregulatory intent of Section 253 is upheld going forward. For example, the Commission should recognize that any time (1) new entrants are subjected to a different process than other rights-of-way pole users; (2) *de facto* and explicit moratoria are imposed by municipalities; (3) excessive delays occur in negotiations and approvals for right of way agreements and permitting; (4) excessive fees or other costs are required in the permitting process; and/or (5) any other unreasonable conditions or prohibitive conditions are imposed by municipalities, such actions impede deployment of broadband infrastructure in violation of Section 253. Accordingly, the Commission should adopt a rule that reiterates that Section 253(a) bars state or local requirements that have the effect of imposing barriers to broadband infrastructure deployment.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

COMMENTS OF CROWN CASTLE INTERNATIONAL CORP.

Crown Castle International Corp. and its subsidiaries ("Crown Castle") submit these comments in response to the Commission's Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment on the Commission's proposals to streamline deployment of wireline broadband infrastructure.[2] Crown Castle appreciates this opportunity to submit its views and encourages the Commission to act quickly to adopt the NPRM proposals suggested herein to create a regulatory environment that will allow the United States to maintain its position as a global leader in the deployment and utilization of broadband services and infrastructure.

I. INTRODUCTION

The deployment of robust broadband networks is critical to meet the increasing demand for bandwidth and services, and to ensure that the United States maintains its position at the forefront of the technological revolution. The proliferation of broadband-enabled devices has placed an unwavering demand on ubiquitous broadband availability throughout the country, and, as the Commission has recognized, "new uses of the network – including new content, applications, services, and devices – lead to increased end-user demand for broadband, which

[2] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*, 32 FCC Rcd 3266, WC Docket No. 17-84 (rel. Apr. 21, 2017) ("*NPRM*").

drives network improvements, which in turn lead to further innovative network uses."[3] This cycle will only intensify as technology evolves over time. Therefore, it is critical that the Commission adopt rules that foster the deployment of next-generation broadband networks that can meet the intensifying demand for bandwidth and services.

However, the challenge of developing the facilities and infrastructure needed to power next-generation broadband networks is substantial. As Chairman Pai recently explained, "building, maintaining, and upgrading broadband networks is expensive. . . . [O]perators will have to deploy millions of small cells, and many more miles of fiber and other connections to carry all this traffic. Doing all this will command massive capital expenditures."[4]

Crown Castle is uniquely positioned to meet the challenge to deploy the networks necessary to power a 21st century economy. Founded in 1994, Crown Castle is the country's largest independent owner and operator of shared wireless infrastructure, with more than 40,000 towers, nearly 25,000 small cell installations, and over 26,500 miles of fiber. Crown Castle has more than 15 years of experience deploying small cell networks. Notably, Crown Castle does not hold wireless licenses, and does not itself provide personal wireless services; rather, its network offerings are exclusively wireline. Utilizing its extensive fiber networks, Crown Castle provides (among other service offerings) wholesale wireline transport services to its wireless carrier customers.[5]

---

[3] *Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905, ¶ 14 (2010).

[4] *Remarks of Federal Communications Commission Chairman Ajit Pai at the Mobile World Congress*, Ajit Pai, FCC at 2 (Feb. 28, 2017), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-343646A1.pdf.

[5] Crown Castle entities currently hold utility certifications in 45 states, the District of Columbia, and Puerto Rico. In all of these jurisdictions, utility commissions have issued Crown Castle entities certificates or the equivalent to provide its wholesale transport services. However, the status of these service offerings has recently come into question in Texas and Pennsylvania. *See Complaint of Extenet Network Sys., Inc. Against the City of Houston for Imposition of Fees for*

Indeed, although well-known for its tower business, Crown Castle is also now one of the nation's largest providers of fiber optic telecommunications services.[6] Crown Castle uses its fiber optic networks to provide telecommunications services to myriad customers, including wireless carriers, traditional enterprise customers, educational institutions, and government.

As both an infrastructure provider and a telecommunications service provider, Crown Castle occupies a unique position in the deployment of broadband networks – Crown Castle is an existing attacher to poles, a new entrant, and a pole and conduit owner. Therefore, Crown Castle maintains an invaluable perspective on the Commission's proposals to speed access to poles, and more generally, on the Commission's proposals to deploy wireline broadband infrastructure.

In Section II of these comments, Crown Castle offers some examples of its experiences as an existing attacher to poles and as a new entrant, highlighting some of the issues it has faced attaching to poles, and Crown Castles suggests ways that the Commission can ensure access to poles occurs in an expedited and efficient manner. In Section III of these Comments, Crown Castle describes its support for Commission rules interpreting Section 253 of the Communications Act, and describes how localities have created barriers to the deployment of broadband networks.

Use of Public Right of Way, Proposal for Decision, SOAH Docket No. 473-16-1861, PUC Docket No. 45280 (Tex. State Office of Admin. Hearings Feb. 24, 2017) (finding that unswitched point-to-point transport service to retail CMRS providers is not a wireless service); *but see Review of Issues Relating to Commission Certification of Distributed Antennae System Providers in Pennsylvania*, Motion of Robert W. Powelson, 2517831-LAW, Docket No. M-2016-2517831 (Penn. PUC Mar. 2, 2017) (finding that DAS networks should no longer be deemed utilities under Pennsylvania law because they are deemed CMRS facilities).

[6] *Crown Castle Announces Agreement to Acquire Wilcon*, Crown Castle, News Release (Apr. 17, 2017), *available at* http://investor.crowncastle.com/phoenix.zhtml?c=107530&p=irol-newsArticle&ID=2262255 (stating that Crown Castle now owns over 26,500 route miles of fiber, and is one of the nation's largest providers of fiber infrastructure).

II. THE COMMISSION SHOULD ADOPT RULES THAT ENSURE JUST AND REASONABLE POLE ATTACHMENT CONDITIONS TO STREAMLINE BROADBAND INFRASTRUCTURE DEPLOYMENT

As Crown Castle endeavors to both maintain its existing inventory of pole attachments and gain access to poles as a new attacher, the pole attachment process is often complicated by the actions of the companies that own the poles, such as investor-owned utilities and incumbent local exchange carriers ("ILECs") (collectively "utilities"). Although many utilities seek to work with Crown Castle cooperatively, too often Crown Castle encounters utilities that continue to obstruct pole attachments by imposing extremely burdensome rates, terms, and conditions on attachers that delay and complicate the pole attachment process. As discussed below, Crown Castle supports many of the Commission's proposals to expedite the pole attachment process, and Crown Castle also identifies additional issues that the Commission should address.

A. Pole Owner Practices That Are Inhibiting The Deployment Of Broadband

In the NPRM, the Commission seeks comments on proposals to streamline and accelerate access to poles, focusing on the Commission's timelines and make-ready processes. In addition, however, Crown Castle believes the Commission should address an issue that significantly inhibits the deployment of broadband. Although the Commission has in the past declined to limit pole owners to National Electric Safety Code ("NESC") standards,[7] Crown Castle is encountering a growing number of pole owners that use that loophole, allowing them to adopt "construction standards," to adopt requirements that vastly exceed the NESC and in so doing exclude altogether or otherwise inhibit many attachments. Essentially, pole owners are adopting *de facto* blanket bans under the guise of adopting their own "construction standards." These

[7] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Report and Order, 11 FCC Rcd 15499, 16068-69, ¶¶ 1145-49 (1996) (*Local Competition Order*) (specifically declining to impose the National Electric Safety Code (NESC)).

individual standards are not legitimately grounded in safety, reliability, or engineering concerns. Rather, they reflect a desire by the utilities involved to severely limit if not outright prohibit pole attachment. In that respect, these steps are a continuation of the behaviors that have driven pole attachment law and regulation since the adoption of the 1978 Act.

For example, for decades, it has been common and standard utility industry practice to attach equipment to poles in the "unuseable" space (*i.e.*, below the lowest communications line).[8] Yet, particularly over the past several years, Crown Castle has encountered a growing number of pole owners, whose territories cover many states, who have adopted blanket bans on attaching any equipment in the common space – despite the fact that this is a well-established and long-standing practice. The NESC has rules explicitly governing the safe attachment of ancillary equipment to the pole,[9] and it is a practice that has been widely used by cable operators, incumbent and competitive LECs, and even electric utilities themselves. But after the Commission explicitly rejected blanket bans on wireless equipment in its 2011 Order, utilities are trying a different approach by adopting new construction standards that prohibit attachment of any type of equipment, other than antennas, to poles. Essentially, the utilities are using the

---

[8] *In the Matter of Texas Cablevision Company v. Southwestern Electric Power Company*, 1985 FCC LEXIS 3818, ¶6 (1985) ("to the extent this ancillary equipment may occupy the 18-28 feet designated as 'ground clearance,' which by definition is excluded from usable space, it is to be omitted from any measurements"); *Capital Cities Cable, Inc. v. Mountain States Tel. and Tel. Co.*, 1984 FCC LEXIS 2443, ¶ 23 (1984) ("[T]he space deemed occupied by CATV includes not only the cable itself, but also any other equipment normally required by the presence of CATV.").

[9] *See, e.g.*, Institute of Electrical and Electronics Engineers, Inc., Nat'l Electric Safety Code, Rule 201 ("Part 2 of this Code covers supply and communication conductors ***and equipment***" (emphasis added)); Rule 232B3 (setting clearance to equipment cases), Table 232-2; rule 236D (location of equipment relative to climbing space); Rule 252B2 ("The transverse load on structures and equipment shall be computed by applying, at right angles to the direction of the line, the appropriate horizontal wind pressure determined under Rule 250. This load shall be calculated using the projected surfaces of the structures and ***equipment supported thereon***" (emphasis added)).

narrowest interpretation of what would otherwise appear to be clear guidance in the 2011 Order. At least in some cases, the new "construction standards" prohibiting equipment attachment on poles are despite the fact that the utility has allowed such equipment attachments on poles for many years.[10] In the 2011 Order, the Commission clarified that to deny access, a utility "must explain in writing its precise concerns—and how they relate to lack of capacity, safety, reliability, or engineering purposes—in a way that is specific with regard to ***both the particular attachment(s) and the particular pole(s) at issue***."[11] In the 2011 Order the Commission also rejected utility company attempts to adopt blanket bans on antenna attachments under the guise of individual construction standards.[12] A utility can no more exclude all equipment attachments based on alleged construction standards than it could exclude all pole top antenna attachments under the guise of an individual construction standard. Utilities may argue that the ban on equipment attachments is a "safety" issue. Yet, Crown has experienced several instances of utilities refusing to consider attachment methods and procedures for such equipment that are NESC compliant and in use safely by other utilities.

As the Commission stated in the 2011 Order, "[i]nterpreting section 224(f) as a Congressional delegation of authority to utilities to define the terms and conditions of attachment would trump the grant of rulemaking authority to the Commission in section 224(b)(1) and (2), and would render such determinations effectively unreviewable by the Commission."[13]

---

[10] *See, e.g. Fiber Technologies Networks, L.L.C. v. Duke Energy-Indiana, Inc., et al.*, FCC, Proceeding No. 14-227, File No. EB-14-MD-015.

[11] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, WC Docket No. 07-245, GN Docket No. 09-51, 26 FCC Rcd 5240, ¶ 76 (2011) (*2011 Pole Attachment Order*) (emphasis added).

[12] *2011 Pole Attachment Order*, ¶ 77.

[13] *2011 Pole Attachment Order*, ¶ 93 (citing 47 U.S.C. § 224(b)(1)–(2)).

Crown Castle has also encountered a growing number of pole owners that have imposed "construction standards" that vastly exceed the safety standards adopted by the NESC. For example, the 2017 version of the NESC adopted a change that now requires a vertical clearance between pole top antennas and power lines of only ***6 inches*** for lines at 8.7kV, ***8 inches*** at 13kV, and ultimately only 22 ***inches*** even at 50kV.[14] Yet, at least one major national investor owned utility now demands a ***10 foot*** clearance, and others require six feet or more. One major investor owned utility has imposed a requirement that antennas be separated from electric lines by a distance equal to three times the manufacturer's "Minimum Approach Distance" for the antenna. In other words, they are imposing their own, arbitrary RF clearances. The effect is to require in every instance a new, significantly taller pole, which significantly increases the cost and increases the time for deployment.

These requirements are unjust and unreasonable terms and conditions of attachment, and in some instances they are *de facto* denials of access. Although the utilities allege safety concerns, there is no legitimate basis for such clearance requirements. For example, at least one utility has argued that the ban on equipment is based on the need for climbing clearances. However, Crown Castle has developed and proposed attachment techniques that are NESC compliant and address the utility's assertions, but the utility will not accept Crown Castle's resolution. Similarly, demands for clearance from antennas based on RF emissions ignore rules and practices that address RF safety concerns. For example, many utilities require and Crown Castle provides "cut off" switches that allow antennas to be deactivated during work in their vicinity and other mitigation measures. Electrical workers are highly trained, are accessing the pole in their professional capacity while cognizant of the danger, and can be expected to use a

[14] Institute of Electrical and Electronics Engineers, Inc., Nat'l Electric Safety Code, Rule 235I, Table 235-6 Ln. 1.c. (2017 Edition).

disconnect switch. Crown Castle has deployed this safety measure in jurisdictions across the country. Similarly, demands for clearances of multiple times the manufacturers' recommendation ignore the fact that the Commission's rules regarding RF exposures already include a significant safety factor built in.[15] For occupational exposures, such as would occur on the pole, the Commission's rules use a safety factor of 100 times below the level of potentially harmful biological effects.[16] Thus, these construction standards that allegedly are based on safety concerns actually reflect attempts by utilities to achieve the pole top blanket bans that the Commission has already ruled unlawful.

Crown has also encountered other dimensional limitations in other parts of the country, such as limiting cabinet sizes to 2 feet by 3 feet. Again, there is no basis for such blanket limits. For any given pole, the utility must be able to identify specific safety and reliability grounds for denying equipment of a different size. In reality, there is no such basis, as many poles are structurally capable of accommodating larger equipment.

---

[15] *See, e.g.,* 47 CFR 1.1310; *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields*, FCC Office of Engineering & Technology, OET Bulletin 65, Edition 97-01 (2001) *available at* https://transition.fcc.gov/bureaus/oet/info/documents/bulletins/oet65/oet65c.pdf (FCC OET Bulletin 65); *RF Safety FAQ*, Federal Communications Commission, *available at* https://www.fcc.gov/engineering-technology/electromagnetic-compatibility-division/radio-frequency-safety/faq/rf-safety#Q9 (last visited June 15, 2017), ("The FCC guidelines for human exposure to RF electromagnetic fields were derived from the recommendations of two expert organizations, the National Council on Radiation Protection and Measurements (NCRP) and the Institute of Electrical and Electronics Engineers (IEEE). Both the NCRP exposure criteria and the IEEE standard were developed by expert scientists and engineers after extensive reviews of the scientific literature related to RF biological effects. The exposure guidelines are based on thresholds for known adverse effects, and **they incorporate prudent margins of safety**. In adopting the current RF exposure guidelines, the FCC consulted with the EPA, FDA, OSHA and NIOSH, and obtained their support for the guidelines that the FCC is using." (emphasis added)).

[16] FCC OET Bulletin 65 at n. 6 ("Both the ANSI/IEEE and NCRP exposure criteria are based on a determination that potentially harmful biological effects can occur at a SAR level of 4.0 W/kg as averaged over the whole-body. Appropriate safety factors were then added to arrive at limits for both whole-body exposure (0.4 W/kg for "controlled" or "occupational" exposure and 0.08 W/kg for "uncontrolled" or "general population" exposure, respectively)").

In addition to being unjust and unreasonable terms and conditions of attachment, these types of requirements – both excessive clearance requirements and prohibitions on equipment – impede deployment of broadband because they also create collateral issues with local governments and the public. For example, many local governments prohibit or strongly disfavor ground mounted equipment around poles. If the pole owner prohibits equipment on the pole, and the local government does not want equipment on the ground, Crown Castle's deployment is stymied, as it is caught in the middle.

Excessive clearance requirements, in particular, create issues with local governments. By imposing clearance requirements that far exceed those required by the NESC, utilities have forced Crown Castle to attach antennas higher on the pole, thereby increasing the height of the pole. The resulting larger, taller poles often create unnecessary conflict with local regulations, and in some instances may render attachment impossible under local code. Many local governments are now adopting regulations limiting the height of antennas, either in total or above the pole or both. So, for example, an ordinance may allow antennas that are no more than three feet above the existing pole or no taller than 40 feet.[17] But when the utility requires a 6 or 10 foot clearance, or requires the installation of a new Class 1 pole in all instances, Crown Castle cannot comply with the local code. The pole owner's standards become effective prohibitions on deployment.

Some utilities are also imposing blanket requirements to replace the existing pole with a Class 1 pole for any wireless attachment. As a result, there is always a new, taller replacement pole installed. And a common problem is that when exiting attaching parties do not timely move their lines to the new pole, there are two poles next to each other. Local governments strongly

[17] At the same time, such arbitrary limits imposed by local governments are problematic because they are divorced from the engineering requirements of deployment.

oppose such "double pole" situations. But again, they are not in Crown Castle's control. They are precipitated by the utility company insisting on pole changes in every instance.

Therefore, Crown Castle requests that the Commission adopt a rule that any "construction standard" imposed by a utility that exceeds the NESC clearance standard by more than 20 percent is presumptively unfair and unreasonable in violation of Section 224 of the Communications Act.[18]

B. Improving Broadband Deployment With Amendments To The Commission's Timeline Rules

In the NPRM, the Commission seeks comment on potential reforms to the various steps of the Commission's current pole attachment timeline.[19] While Crown Castle generally supports slight adjustments to the Commission's pole attachment timeline,[20] in Crown Castle's experience, manipulation of the timeline by utilities is a more significant cause of delay than the time frames, *per se*. For example, utilities have often required Crown Castle to undertake a "pre-application" process prior to triggering the Commission-mandated pole attachment shot clock, which substantially interrupts the Commission's pole attachment timeline. Crown Castle urges the Commission to adopt rules that promote a clear and efficient pole attachment process that cannot be manipulated to the detriment of attaching parties.

1. Application Review

a. Timing

The Commission's current four-stage timeline for wireline and wireless requests to access the "communications space" on utility poles generally promotes efficiency. However,

---

[18] 47 U.S.C. § 224(b)(1) (requiring terms and conditions for pole attachment to be "just and reasonable").

[19] *NPRM*, ¶ 7.

[20] *2011 Pole Attachment Order*, ¶¶ 22-23.

Crown Castle is deeply concerned with a growing number of utilities who require a "pre-application" process before they will accept an application – thus preventing attaching entities from starting the clock on the Commission's four-stage timeline. For example, prior to accepting an application to attach to specific poles, utilities have required Crown Castle to submit a request to the utility to prepare an estimate of the costs to complete the make ready survey. In other words, the utility is imposing a new step where they effectively want to perform a survey to determine what the cost of the survey step will be. Such demands are duplicative and unnecessary.

Not only do the utilities require Crown Castle to take this extra step outside of the Commission's defined pole attachment process, but the utilities also require Crown Castle to pay for developing the pre-application estimate. Only after each of these steps is completed will the utility accept an application that officially "starts the clock" on the required four-stage timeline. In many cases this "pre-application" process has taken several months, far outlasting the time allotted by the Commission for the pole attachment process through the four-stage timeline. Because it is deemed by the utility to be outside of the defined pole attachment process, they claim there are no timelines associated with completing this step. For example, utilities have required Crown Castle to submit an application, along with an application fee,[21] to the utility to

[21] These requirements also are unlawful because utilities cannot charge application fees. The administrative costs of processing pole attachment applications are already recovered as part of the pole rental under the Commission's formula. *See, e.g., Texas Cable and Telecommunications Ass'n v. GTE Southwest, Inc*., Order, 14 F.C.C.R. 2975 ¶ 32 (CSB 1999); *affirmed,* 17 F.C.C.R. 6261 ¶ 11 (FCC 2002)(disallowing double recovery of makeready costs by imposing such costs in the rent and requiring upfront payments); *Texas Cable & Telecommunications Ass'n v. Entergy Services*, Order, 14 F.C.C.R. 9138 ¶¶ 5, 14 (CSB 1999) (application fee not allowed); *Cable Association of Georgia*, at ¶ 20 (finding the utility's practice of denying access to poles until up-front make-ready fee was paid unreasonable and stating that "Georgia Power first should incur the costs attendant to make-ready, and then seek reimbursement for its actual make-ready costs.").

prepare an estimate of the costs to complete the initial survey. The application is then assigned to the appropriate operating region of the utility and an estimate of the costs of the make ready survey is developed. The utility requires that Crown Castle pay all of survey charges up front, before the application is scheduled for review and before the survey has occurred. Based on Crown Castle's experience with certain utilities, as much as 90 percent of the time this "pre-application" step results in delays of at least 45 days, and even as long as 11 months.

At least one ILEC has also engaged in a similar practice of imposing "pre-application" procedures. After application and fee are submitted, the carrier created estimates of the costs to complete the make ready work survey. Crown Castle was required to pay the costs of the survey before the pole owner would commence the start of the survey. Although Crown Castle believes that all of these activities clearly fall within the initial 45 day survey portion of the Commission's rules, the pole owner takes the position that all of those steps are "pre-application."

Additionally, as currently structured, the Rules do not allow the clock to start on pole attachment negotiations unless and until an attachment application is submitted for a particular pole. Typically, preliminary inquiry and negotiation on construction standards and the form of a master pole attachment agreement must take place before the attacher has enough information to create the application. While most utilities will accommodate such negotiations before receipt of a formal application, they are not subject to the Commission timelines and there is no enforced sense of urgency imposed on the pole owner. Consequently, these negotiations can take many months or even years.

While these "pre-application" steps may not seem overly burdensome, the delay they cause are significant. Further, when Crown Castle must undertake this "pre-application" process for thousands of poles, its ability to deploy broadband infrastructure is substantially hindered.

Since utilities are inappropriately imposing "pre-application" requirements on Crown Castle outside of the Commission's four-stage pole attachment timeline, Crown Castle urges the Commission to adopt a rule that clearly prohibits pole owners from attempting to evade the timelines by imposing additional steps. The Commission should adopt a rule clearly prohibiting evasions of the timeframes and clarifing that pole owners must accept permit applicatons without "pre-application" processes that purport to be outside the timeframe.

Although the Commission has previously held that the timeframe starts upon submission of a "complete" application, the increasing use of allegedly "pre-application" mechanisms to delay starting the clock indicate that the Commission should revise its rules. Crown Castle suggests the Commission amend its pole rule to follow its wireless Shot Clock and Section 6409 rules. The timelines should start immediately upon submission of a request to attach – regardless of how characterized by the pole owner. If the pole owner contends the application is incomplete, it must notify the applicant in writing within 10 days in order to stop the clock, and such notification must identify the specific requirements in the pole attachment agreement or applicable attachment rules that are missing.

At a minimum, the Commission should clarify that all of these types of extra administrative steps imposed by the pole owner count against the 45 days.

2. Survey, Cost Estimate, and Acceptance

a. Eliminate The Fourteen Day Estimate Period

Crown Castle supports the elimination of the of the 14-day cost estimate phase of the pole attachment timeline. When the Commission adopted the four-stage pole attachment timeline in 2011, it allotted an initial 45-day period where "the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready

is required."[22] An inherent part of conducting such an engineering study to determine what make-ready work is required is determining the potential costs of such work. Thus, the additional 14-day cost estimate phase is superfluous, unnecessary, and only acts to prolong the pole attachment process. Therefore, to streamline and promote an efficient pole attachment timeline, the Commission should eliminate the 14-day cost estimate phase and explicitly include the cost estimate as part of the initial engineering survey phase of the timeline. Subsequent to the completion of the engineering survey phase of the timeline, the attaching entity should then be permitted 15 days to either accept or reject the pole-owner's proposed costs to complete the make-ready work. Under this proposal, the pole-attachment timeline will be shortened by two weeks, which over the course of time represents a significant step forward in promoting streamlined and efficient deployment of broadband infrastructure.

b. Need For Detailed Make-Ready Cost Estimates

In addition Crown Castle also agrees with the Commission that additional transparency is needed and will lead to more efficient pole attachments.[23] To assist attaching entities in determining whether the costs associated with attaching to a pole are "just and reasonable," consistent with Section 224, Crown Castle recommends that the Commission require pole owners to provide a breakdown of the pole owners' "actual costs" in the cost estimate for make-ready work. In this respect, Crown Castle also supports the Commission's proposal to codify the existing law that limits make-ready fees to the actual costs incurred to accommodate a new attachment.[24]

In Crown Castle's experience, many utilities, including ILECs, will provide Crown

[22] *2011 Pole Attachment Order*, ¶ 22.

[23] *NPRM*, ¶ 27.

[24] *NPRM*, ¶ 35.

Castle only an overall estimate of the costs of attaching, but refuse to give a pole-by-pole breakdown of the work and costs. By only providing a consolidated estimate of the costs of allegedly required make-ready, utilities may potentially include costs that are unnecessary, inappropriately inflated, or that attaching entities could easily avoid.[25]

Crown Castle urges the Commission to adopt a rule that requires pole owners to provide attaching entities specific cost estimate broken down on a pole-by-pole basis. Doing so would level the playing field in negotiations between attaching entities and pole owners by giving attaching entities visibility on the front end of a pole attachment project to determine where the most expensive parts of the project lie and how they may be avoided. Therefore, attaching entities would no longer be subject to a "take it or leave it" policy from pole owners, and could either determine whether the pole owner is unlawfully inflating the make-ready cost or negotiate around expensive aspects of pole attachment projects. Such a rule would be consistent with Section 224 by ensuring adequate notice and that all aspects and costs of the pole attachment process are "just and reasonable."

c. Large Applications

Crown Castle also believes that the Commission should amend its timeframe by eliminating the additional time allowed in the survey stage for "large" orders. Crown Castle has encountered utilities that attempt to manipulate Crown Castle's ability to submit large orders for pole attachments, thereby undermining the Commission's streamlined pole attachment processes. For example, many utilities put a limit on the total number of pole attachment applications they will accept in a 30-day period. Other utilities will manipulate the process by limiting the total number of poles, or total amount of linear feet, they will accept over defined periods of time.

[25] *See Cavalier Telephone, LLC v. Virginia Electric and Power Co.*, 15 FCC Rcd 9563 (2000) (finding that the attaching party was being required to pay for make ready that was not necessary for the accommodation of its attachments).

These limits are designed to spread processing pole attachments over multi-year periods so utilities can avoid having to hire extra personnel to process applications in peak periods. They are entirely arbitrary, and they undermine the Commission's goal to accelerate the deployment of next-generation infrastructure.[26]

Although Crown Castle recognizes that utilities should not be expected to maintain staff for large pole attachment projects that may only happen occasionally and without predictability, there is an option for prompt processing. Crown Castle recommends that the Commission adopt a rule under which the attaching party would have the right to elect up front to pay for the use of utility-approved contractors to process the applications rather than having the timeframes extended. If the attaching party chooses not to hire contractors, then the current extensions can continue. But this approach would put the power of time in the hands of the attaching party.

3. Make-Ready

In the NPRM, the Commission recognizes that the make-ready process is a significant part of the attachment and deployment process. Yet, it is an activity that existing attaching entities are not necessarily focused on. They have their facilities attached and are concerned about potential harm that could cause service outages. At the same time, other than the electric company and ILEC, all other entities attached to a pole were, at some not too distant point, the company seeking to attach new facilities and having to deal with make-ready delays, costs, and obstructions.[27] As both a currently attached entity and a company actively seeking to deploy,

---

[26] *NPRM*, ¶ 5.

[27] *See, e.g., Texas Cable & Telecommunications Association, et al. v. Entergy Services, Inc.*, 14 FCC Rcd 9138 (1999) (finding unjust and unreasonable make-ready costs imposed by the utility on cable providers); *Cavalier Telephone, LLC v. Virginia Electric and Power Company*, 15 FCC Rcd 9563 (2000) (finding that the utility "cannot use its control of its own facilities to impede [the competitive provider's] deployment of telecommunications facilities); *Knology, Inc. v. Georgia Power Company*, 18 FCC Rcd. 24615 (2003) (finding that "an attacher may not be

Crown Castle appreciates the concerns and interests of both sides of the issue.

As the following discusses, Crown Castle generally supports proposals to expedite make-ready by putting more control into the hands of the party seeking to attach, but only if appropriate safeguards are included. The concepts are easily supported, but the details are critical to actual implementation.

a. Shortening The Current Timeline

Crown Castle supports the Commission's proposal to adopt as a rule its 2011 "best practice" make-ready period of 30 days or less, but the 30 day period should not be limited to orders under a certain size.[28] Adopting the 30 day period as a rule will help fulfill the Commission's goal "to shorten the make-ready work timeframe."[29] Crown Castle often encounters pole owners and other attaching parties that do not prioritize make-ready work. We recognize utilities have many priorities and responsibilities, but the lack of prioritization results in countless delays in the pole attachment process. The adoption of a shorter make-ready period will promote the efficient completion of make-ready work.

Furthermore, as also discussed above, the longer timelines afforded in the case of large pole attachment requests and for wireless make-ready work above the communications space add even more delay in the pole attachment process and should be eliminated.[30] As proposed above, Crown Castle recommends that the Commission give the attaching party the option of agreeing

---

billed for unnecessary, duplicative or defective make-ready work"); *Cable Television Association of Georgia, et al. v. Georgia Power Company*, 18 FCC Rcd 16333 (2003) (finding that utilities should first incur make-ready costs, and then seek reimbursement from attachers for the actual make-ready costs); *Salsgiver Communications, Inc. v. North Pittsburgh Telephone Company*, 22 FCC Rcd 20536 (2007) (finding that utilities must give attachers an opportunity to review the estimated costs of make-ready work before agreeing to the work).

[28] *NPRM*, ¶ 11.

[29] *NPRM*, ¶ 11.

[30] *See* 47 CFR §§ 1.1420(e)(2)(ii), 1.1420(g).

to pay for approved contractors to perform the work on "large" projects, and if the party makes that election, there should be no additional time for "large" projects.

Allowing the attaching party to choose to use utility-approved contractors for wireless attachments in the electric space, likewise, eliminates any basis for giving utilities an additional 30 days to perform such make-ready. Indeed, the fundamental rationale for such extra time is extremely suspect at this point. In the 2011 Order, the Commission justified the additional time, in no small part, on the assertion that "at present, there is less experience with application of state timelines to attachments at the pole top, and in those circumstances, it is appropriate to err on the side of caution."[31] Although Crown Castle does not agree with this explanation in 2011, the justification certainly is no longer valid in 2017. Crown Castle and other companies have safely installed thousands of pole top wireless attachments. The NESC has even been modified to recognize that the installation of wireless antennas at the pole top will only be accomplished by qualified electrical workers, making excessive clearances unnecessary. Indeed, the 2017 Edition of the NESC provides for clearance between antennas and supply lines of only 6 inches for lines with voltages of 8.7kV and only 22 inches even at 50kV.[32] Fundamentally, wireless installations on pole tops and in the communications space are no longer the unusual event that utilities were claiming before 2011.

When coupled with a Commission-defined make-ready period of 30 days, the use of utility-approved contractors to complete make-ready work would make for an efficient and predictable pole attachment process.

b. Use Of Approved Contractors In Electric Space

Another part of the Commission's 2011 timeline rules that create a significant

[31] *2011 Pole Attachment Order*, ¶ 33.

[32] NESC Table 235-6 ln. 1.c.

impediment to timely make-ready is the rule preventing companies from using approved contractors to complete make-ready in the electric space. Under the current rules, if make-ready work in the communications space is not timely completed, Crown Castle has a remedy to use approved contractors to finish the work.[33] But if the make-ready work is in the electric space, Crown Castle does not have the same remedy. This is a significant gap in the Commission's rules that leaves Crown Castle without a meaningful remedy when the electric utility fails to perform make-ready work in a timely fashion. Unfortunately, such failures are increasingly common.

The Commission should not leave attaching parties without any meaningful remedy when utilities fail to perform electric space make-ready in a timely fashion. Crown Castle suggests the Commission modify its rules to allow attaching parties to use utility-approved contractors for all aspects of make-ready work, not just communications space make-ready work. Utility-approved contractors frequently are already performing make-ready work at the direction of utilities themselves, so a rule allowing attaching entities the ability to use the very same utility-approved contractors to complete pole replacements and transfer work would not drastically alter the pole-attachment ecosystem. In fact, such a rule should cause minimal concern for utilities and attaching entities alike, and would significantly shorten the make-ready work timeframe.

Additionally, by utilizing the same contractors used by the utility to perform make-ready work, any concern over compliance with safety standards should be minimized for the utility and the attaching entity alike.

[33] *2011 Pole Attachment Order*, ¶¶ 49-61 (stating that "if a utility does not meet the deadline to complete a survey or make-ready established in the timeline, an attacher may hire contractors to complete the work in the communications space"); *See also* 47 C.F.R. § 1.1420.

c. Improving Transparency, Data Availability, And Notifications

In the NPRM, the Commission also appears to recognize that the lack of availability of information and transparency into utility company information is an impediment to deployment.[34] Crown Castle agrees.

For example, a significant problem with completing make-ready within the Commission's timeframes is lack of information about existing attachments and also notification of existing attaching entities. Crown Castle has encountered pole owners that refuse to notify attaching parties of need for make-ready work and put the notification burden on Crown Castle. Disregarding the fact that pole owners are required by the Commission's rules to ensure notification of make-ready work to all other attachers,[35] the issue with utilities imposing this burden on Crown Castle is that Crown Castle lacks necessary information – or access to the information – to know what other entities may have attachments on the relevant poles. As a result, Crown Castle is unable to timely complete the notifications.

In order to avoid unnecessary delay in the make-ready process, Crown Castle proposes that the Commission recommend the adoption of automated databases and notifications systems, such as those provided by NJUNS,[36] as a "best practice" for all utilities. NJUNS, for example, is a "not-for-profit consortium of utility companies created for the purpose of providing 'efficient utility communication.' NJUNS provides software as a service that allows its members to communicate and track field workflow regarding joint utility ventures: joint pole administration,

---

[34] *NPRM*, ¶ 27

[35] *See* 47 C.F.R. § 1.1420(e).

[36] *NJUNS Efficient Utility Communication*, NJUNS, *available at* https://web.njuns.com/ (last visited on June 15, 2017).

joint trench coordination, oversize load move coordination and large project notification."[37]

An automated make-ready notice system will help eliminate the current problems of timely notice to all attaching parties. It will also streamline the attachment process, in general, by providing attaching parties more information about the status of poles. It may significantly reduce the survey process. Some utilities are adopting systems like NJUNS to process all their pole attachment applications, and by tying this to make-ready notification to other attachers, information on next steps required will be made available to all who need it. It would also reduce the burdens imposed on utilities by the Commission's rules thereby streamlining the make-ready process.

d. The Need To Complete All Make-Ready Needed To Activate Service

An additional impediment to achieving the Commission's goal "to shorten the make-ready work timeframe"[38] is the failure by electric utilities to timely complete electric power activation of attachments. Like some other communications attachments, Crown Castle's equipment requires electricity to function. Because of its location on the poles, power connections – sometimes including power line extensions and meters or other methods to monitor power consumption – must be installed.[39]

If make-ready, and ultimately a guaranteed right to use poles under Section 224(f), are to be meaningful, at the end of the process, the attaching entity must have everything done at the

[37] *Id.*; *About NJUNS*, NJUNS, *available at* https://web.njuns.com/about/ (last visited on June 15, 2017).

[38] *NPRM*, ¶ 11.

[39] Crown Castle has had to undertake extraordinary measures to bring power to its attachments in the past. Bringing power from a source of electricity to the poles is often extremely time consuming and resource intensive. For example, Crown Castle has spent approximately $1 million bringing power to a single pole in the past. These measures could be remedied if utilities begin to monitor Crown Castles' power consumption through a use of a small meter on or near the pole.

pole that is necessary for it to provide service. Yet, Crown Castle has encountered significant delays by electric utilities who take months to make the final electricity attachments to activate Crown Castle's equipment. Indeed, Commissioner O'Reilly specifically recognized the problem of broadband deployment being thwarted by electric companies refusing to timely activate attachments in his May 31, 2017 tweets.[40] The Commission's make-ready timelines are meaningless and easily thwarted if the electric utility is not required to perform all necessary actions to permit activation of all attachments. Therefore, Crown Castle urges the Commission to recognize electric power activation of attachments as part of the make-ready work that must be completed within the Commission's defined timeframe. Without such recognition, regardless of the timeframes to complete make-ready work adopted by the Commission, activation of attachments will be subject to the whims of electric utility thereby thwarting the efficient and predictable deployment of broadband infrastructure and rendering pole access ineffective.

C. Alternative Pole Attachment Processes

In the NPRM, the Commission seeks comment on possible alternatives to the Commission's current process, and the potential remedies, penalties, or other ways to incent utilities and existing attachers.[41] In considering such alternatives, the Commission recognizes the need to balance the benefits of potential alternatives against safety and property concerns.[42] In its consideration of alternative pole attachment processes, the Commission must reach a resolution that facilitates timely deployment of broadband facilities while also ensuring appropriate risk manage, liability, oversight and remedies for existing attachers consistent with

---

[40] Commissioner Mike O'Rielly, Twitter (8:08 AM – 31 May 2017) *available at* https://twitter.com/mikeofcc/status/869933584143888384.

[41] *NPRM*, ¶ 13.

[42] *Id.*

Section 224 of the Communications Act.

Crown Castle currently has approximately 1 million existing utility pole attachments nationwide. Accordingly, Crown Castle shares the same concerns as other existing attachers that are concerned about potential damage and service outages that can result from third-party make-ready work that moves and impacts existing attachments. Indeed, Crown Castle has experienced situations where utilities have moved Crown Castle's attachments without using Crown Castle-approved contractors, and there have been times where these unapproved third-party contractors damage Crown Castle's facilities, do not properly re-attach Crown Castle's equipment, and cause network outages. In addition to concerns about immediate damage, such improper work also could potentially move Crown Castle's facilities into violation of the NESC and/or other applicable regulations or standards.

At the same time, Crown Castle is aggressively pursuing the deployment of new wireless and wireline facilities.[43] As the Commission has noted, removal of barriers to infrastructure investment and deployment is crucial to fostering innovation and economic opportunity across all sectors of industry.[44] Unfortunately, as discussed above, Crown Castle has encountered significant delays in the make-ready process when utilities and existing attachers fail to complete make-ready work in a timely manner. Accordingly, Crown Castle supports the evaluation of

[43] *See, e.g. All Crown Castle Projects*, Crown Castle, http://www.crowncastle.com/projects/all-projects.aspx (last visited on June 15, 2017).

[44] *2011 Pole Attachment Order*, ¶¶ 2-3; *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17633, ¶¶ 2-5 (2011); *See also* Ajit Pai, *On the Road in the Industrial Midwest*, FCC Blog, March 20, 2017, *available at* https://www.fcc.gov/news-events/blog/2017/03/20/road-industrial-midwest.

alternative make-ready processes to help speed access to poles for new entrants.

Crown Castle generally supports the processes that are loosely termed "one-touch" make-ready. However, Crown Castle believes the Commission should carefully evaluate the details of such plans to reach an alternative process that will facilitate deployment while protecting the legitimate interests of existing attachers.

1. Use Of Approved Contractors

In general, as also mentioned above, Crown Castle supports proposals to change the Commission's rules to give attaching entities more opportunities to use approved contractors. When a new competitor seeks to attach new facilities, understandably, engaging in make-ready to move existing attachments is low on the priority list for existing attachers, including the electric utility. Even if there is no anti-competitive motive, the reality is that engaging in make-ready may be viewed by the pole's current occupants as a distraction that may be of no benefit to them while imposing inconvenience and cost.

Crown Castle believes that allowing new attachers greater opportunity to use approved contractors can promote more rapid completion of make-ready while also addressing some concerns of existing attachers. For example, in some cases, existing attachers may complain that there is an inherent cost to them of engaging in make-ready, even if they will be reimbursed for incurred costs in the end. But if they are not required to engage in any part of the make-ready process, then those existing attachers will avoid up-front cost or inconvenience.

One key issue in such a scheme is the ability of attaching entities to approve the contractors. For example, Crown Castle, in its role as an existing attacher, has encountered problems when new attachers use contractors who are not Crown Castle-approved. Accordingly, in order for attaching entities to have the opportunity to use approved contractors, Crown Castle generally supports proposals that would require the pole owner and all existing attachers to agree

to contractors that a new attacher would be allowed to use.[45] The ability of the pole owner and existing attachers to vet contractors will help provide greater comfort that work will be performed properly.

2. Penalties For Failure To Timely Perform Make-Ready

The Commission seeks comment on at least one proposal that would impose a $500 per pole per month penalty for existing attachers who fail to timely complete make-ready.[46] Crown Castle does not support proposals where existing attachers would be "fined" $500, or any other amount of money, for failing to meet required make-ready work deadlines. First, the administration, tracking, and enforcement of such fines would simply complicate matters. Do the fines get paid to the new attacher? Is the new attacher required to track the fines? And will the attacher be required to file a complaint in court or at the Commission to recover a fine that may only be a few thousand dollars? Second, a $500 fine is not going to meaningfully motivate a company that is not engaging in make-ready.

Finally, from the perspective of the entity seeking to attach to the pole, fines are not an effective remedy to speed deployment of broadband infrastructure. To help achieve the Commission's goal to accelerate the deployment of next-generation infrastructure,[47] it would be far more effective to allow new entrants more opportunities to utilize approved third-party contractors to perform the make-ready work. A proposal that requires the imposition of fines for failure to perform make-ready work only complicates the pole attachment processes and strays further from the Commission's stated goals.

---

[45] *NPRM*, ¶ 17.

[46] *NPRM*, ¶ 25.

[47] *NPRM*, ¶ 5.

D. Access To Conduit

Crown Castle supports the Commission's proposal to incentivize utilities to make conduit information publically available.[48] In Crown Castles' experience, despite the Commission's existing requirements,[49] utilities are slow to provide data on available conduit, and some utilities in particular refuse to make their conduit maps available at all. Because of the lack of data on the availability of conduits, Crown Castle is often left with no option other than trial and error when determining where to deploy its broadband infrastructure. Particularly in congested areas, Crown Castle is unable to optimize the design of its broadband infrastructure deployment, which results in wasted resources and delayed deployment of facilities. Therefore, Crown Castle supports the Commission's proposal to require conduit owners to make information regarding conduits publically available.[50] If this information about location and availability of conduit were made available in an easy-to-use format it would significantly assist Crown Castle and other competitive providers in accessing conduit and would speed deployment of broadband infrastructure.

As discussed above in the pole context, this may be another situation where requiring – or at least strongly recommending – use of a central database or online portal would be tremendously helpful.

Crown Castle has also experienced particular difficulty accessing electric conduit. In its *2000 Pole Order*, the Commission rejected arguments by electric utilities claiming that communications lines cannot occupy electric conduit.[51] Nonetheless, certain electric utilities

---

[48] *NPRM*, ¶ 27.

[49] 47 C.F.R. § 1.1404(j); *Local Competition Order*, ¶ 1223.

[50] *NPRM*, ¶ 27.

[51] *Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453, ¶¶ 85, 94-

have completely refused to grant Crown Castle any access to their electric conduit. The Commission should clarify, again, that electric conduit must be made available to competitive providers in order to foster the efficient deployment of broadband infrastructure.

E. The Commission Should Emphasize That Section 253 Mandates Access to Municipally-Owned Poles

In the NPRM, the Commission recognizes that providers encounter difficulties accessing poles owned by entities not governed by Section 224, such as local governments and cooperatives.[52] And the Commission asks what action it might take undertake to speed deployment even though such entities are not subject to Section 224.[53]

Crown Castle has encountered difficulty obtaining access to municipally owned poles, as a threshold matter and also on reasonable terms and conditions. For example, Crown Castle has been working to secure access to poles in two municipalities for over 18 months, and still does not have any attachment agreement of any kind. Similarly, Crown Castle has recently encountered a significant increase in local governments seeking to leverage their ownership of poles and control over the public rights of way to impose unreasonable rates. At least one major city is on the verge of imposing a regulatory scheme under which ownership of any new pole installed in the public rights of way must be deeded to the city, and then the provider must pay the city annual rental in excess of $1,000 per year. In other words, the city is using its control over the public rights of way to force providers to use only city-owned poles, and then enriching itself with excessive rental demands.

---

95 (2000) (finding electrical conduits are subject to the same access rules imposed on poles and other utility-owned conduits, and finding electrical conduits may safely be used by several occupants).

[52] *NPRM*, ¶ 30.

[53] *Id.*

The Commission should adopt a rule, or at least a declaratory ruling, holding that access to municipal poles is governed by Section 253 of the Act, and that local governments cannot deny access to their poles or impose unreasonable or discriminatory fees for their use. Contrary to arguments by local governments that access to their poles is "proprietary" and therefore immune from Section 253, local governments are using access to their poles as a part of controlling access to the public rights of way, and it is done through their regulatory powers. Generally, if Crown Castle is seeking to use local government poles, it is because there are no utility-owned poles in the area and the local government will not allow Crown Castle to install its own pole. In such situations, access to the public rights of way is only possible through access to the local government's poles. In effect, access to the municipal poles is access to the public rights of way. If Crown Castle is denied access to those poles, or denied access on reasonable rates, terms, and conditions, it is effectively prohibited from providing telecommunications service in violation of Section 253.

Moreover, the cities' focus on the "proprietary" label is misplaced. The relevant legal issue is that they are exercising their governmental authority. Contrary to the local government's arguments, courts have not held that Section 253 does not apply to "proprietary" interests. Section 253(a) preempts any local government "regulation, or any other . . . legal requirement. . . ."[54] Thus, whether the city's actions are "proprietary" or not is irrelevant under Section 253.

In *State of Minnesota*,[55] the Commission addressed an attempt by the State of Minnesota to enter into an agreement granting to a single entity the exclusive right to construct fiber in the State's rights-of-way. The State argued that the agreement was not a "legal requirement" under Section 253(a), and thus not within the limitations of the statute. The Commission rejected the

[54] 47 U.S.C. § 253(a).

[55] 14 FCC Rcd 21697, 21705, ¶¶ 12-18 (1999).

argument, interpreting the scope of Section 253(a)'s "legal requirement" language to be broad, and specifically holding that Section 253(a) does not limit its preemptive effect to "regulations":

> We conclude that Congress intended that the phrase, "State or local statute or regulation, or other State or local legal requirement" in section 253(a) be interpreted broadly. The fact that Congress included the term "other legal requirements" within the scope of section 253(a) ***recognizes that State and local barriers to entry could come from sources other than statutes and regulations***. The use of this language also indicates that section 253(a) was meant to capture a broad range of state and local actions that prohibit or have the effect of prohibiting entities from providing telecommunications services. We believe that interpreting the term "legal requirement" broadly, best fulfills Congress' desire to ensure that states and localities do not thwart the development of competition.[56]

Thus, the plain language of Section 253(a) emphasizes that it does not apply only to "regulatory" actions by cities or exempt "proprietary" actions.

Even looking at the proprietary/regulatory distinction is not determinative. Applying the Supreme Court's precedent, the Fifth Circuit in *Cardinal Towing & Auto Repair, Inc. v. City of Bedford,* articulated the following test for evaluating whether "a class of government interactions with the market [is] so narrowly focused, and so in keeping with the ordinary behavior of private parties, that a regulatory impulse can be safely ruled out":

> (1) whether "the challenged action essentially reflects the entity's own interest in its efficient procurement of needed goods and services, as measured by comparison with the typical behavior of private parties in similar circumstances," and (2) whether "the narrow scope of the challenged action defeats an inference that its primary goal was to encourage a general policy rather than address a specific proprietary problem."[57]

Applying that standard, local requirements governing access to the public rights-of-way are clearly regulatory in nature, not "proprietary." When cities impose requirements on telecommunications providers accessing the public rights of way, the demands do not reflect the

---

[56] *Id.* at 21707, ¶ 18 (emphasis added) (internal footnotes omitted).

[57] *Cardinal Towing & Auto Repair, Inc. v. City of Bedford,* 180 F.3d 686, 693 (5th Cir. 1999); *see also Sprint Spectrum, L.P. v. Mills,* 283 F.3d 404, 420 (2d Cir. 2002).

local government's own interest in its efficient procurement of needed goods and services. The local government is imposing a general policy.

The analysis also extends to city-owned poles. For example, in *NextG Networks of NY, Inc. v. City of New York*,[58] the court rejected New York City's argument that its requirements for access to city-owned street light poles were exempt from Section 253. The court recognized that the city's scheme for allowing access to city-owned poles was not narrow and instead fundamentally reflected the city's management of access to the public rights-of-way. Accordingly, the court concluded that access to city-owned poles was subject to Section 253's limits.

Consequently, Section 253 regulates access to municipally-owned poles, and the Commission should adopt a rule stipulating as such.

III. THE COMMISSION SHOULD REITERATE ITS PRIOR INTERPRETATIONS OF SECTION 253 AND SHOULD FORMALIZE ITS INTERPRETATIONS IN RULES

Crown Castle agrees with the Commission's view in the *Notice of Inquiry* portion of the NPRM that some state and local regulations imposing restrictions on broadband deployment may effectively prohibit the provision of telecommunications service.[59] Crown Castle encourages the Commission to use its authority under Section 253 to enact rules that formalize interpretations of Section 253 set forth in the Commission's decisions as well as the many court decisions that followed the Commission's lead. Adopting rules to clarify the scope of local authority under Section 253 will fulfill the Commission's mandate to eliminate unnecessary regulation and

[58] *NextG Networks of N.Y., Inc. v. City of New York*, 2004 U.S. Dist. LEXIS 25063, at *16-18 (S.D.N.Y. 2004) (holding that City's requirements and fees for use of city-owned poles "are not of a purely proprietary nature, but rather, were taken pursuant to regulatory objectives or policy").

[59] *NPRM*, ¶ 101.

promote the deployment of advanced telecommunications services by eliminating local regulations that prohibit competition and deployment.

A. The Commission Has the Authority to Issue Rules Interpreting and Implementing Section 253

Congress passed the 1996 Act to establish "a pro-competitive, deregulatory national policy framework" for the telecommunications industry, and "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans *by opening all telecommunications markets to competition*."[60] The Conference Committee Report explained that the purpose of the statute is to provide for a "pro-competitive, de-regulatory national policy framework."[61] In Section 706 of the 1996 Act (codified at 47 U.S.C. § 157), Congress directed the Commission to "encourage the deployment . . . of advanced telecommunications capability to all Americans . . . by utilizing . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."[62] Section 706(b) directs the Commission to undertake regular inquiries into the availability of advanced telecommunications capabilities, and if the Commission finds that advanced telecommunications capabilities are not being deployed to all Americans, Section 706(b) requires the Commission to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[63]

Section 253 is a cornerstone to implementing the policy goals of the 1996 Act, providing

---

[60] S. Rep. No. 104-230, at 1 (1996) (Conf. Rep.) (emphasis added).

[61] *Id.*

[62] Pub. L. No. 104-104, § 706(a), 110 Stat. 153 (1996) (reproduced in the notes under 47 U.S.C. § 157).

[63] Pub. L. No. 104-104, § 706(b), 110 Stat. 153 (1996) (reproduced in the notes under 47 U.S.C. § 157).

that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit *or have the effect of prohibiting* the ability of any entity to provide any interstate or intrastate telecommunications service."[64] By enacting Section 253, Congress gave due consideration to the potential conflict between state and local government regulation and the national need for deployment of advanced telecommunications and information technologies. In Section 253(a), Congress stated a broad general rule preempting local and state regulation. State and local governments generally were preempted from hindering market entry. To retain some state and local regulatory involvement, Congress reserved in Section 253(b) and Section 253(c) specific areas for state and local oversight. In Section 253(b), Congress reserved only to states the authority to adopt "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[65] Section 253(c) reserves limited authority to local governments to "manage the public rights-of-way . . . on a competitively neutral and nondiscriminatory basis. . . ."[66] This statutory structure has been recognized to provide a broad preemption of local requirements and a narrow reservation of authority to municipalities.[67] As the Commission explained in the *Texas PUC Order*, "[t]hrough this provision, Congress sought to ensure that its national competition policy for the telecommunications industry would indeed be the law of the land and could not be frustrated by the isolated actions of individual municipal authorities or states."[68]

---

[64] 47 U.S.C. § 253(a) (emphasis added).

[65] 47 U.S.C. § 253(b).

[66] 47 U.S.C. § 253(c).

[67] *See, e.g., TCI Cablevision of Oakland County, Inc.*, 12 FCC Rcd 21396, 21441-43, ¶¶ 103-109 (*TCI Cablevision*).

[68] *In the Matter of the Public Utility Commission of Texas, the Competition Policy Institute,*

In the *Notice of Inquiry*, the Commission asks whether the adoption of rules to interpret or implement Section 253 would be consistent with Section 253(d), which grants the Commission preemptive authority over local regulations that violate Section 253(a) and (b). As court's have recognized, the Commission's ability, through Section 253(d), to address specific circumstances on a case by case basis does not otherwise preclude the Commission from adopting rules to interpret and implement Section 253.

The Supreme Court held in *AT&T Corp. v. Iowa Utilities Board* that the Commission has broad authority to interpret the 1996 Act, and this authority extends beyond those provisions giving the Commission an adjudicatory role.[69] Even where Congress explicitly provided for a judicial remedy in a federal or state court, the Commission has the authority to issue interpretive rulings of the provisions of the Communications Act and its amendments (including the 1996 Act).[70] The Sixth Circuit addressed this precise issue in *Alliance for Community Media v. FCC.* In that case, the Commission released an order adopting rules interpreting and implementing Section 621(a)(1) of the Communications Act, which prohibits local franchising authorities from "unreasonably refus[ing] to award" competitive cable franchises.[71] The petitioners seeking to overturn the Commission's order in that case argued that because Congress specifically provided

---

Intelcom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc., Teleport Communications Group, Inc., City of Abilene, Texas, Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, 13 FCC Rcd 3460, 3463, ¶ 3 (1997) (*Texas PUC Order*).

[69] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-78 (1999) (*Iowa Utils. Bd.*).

[70] *See, e.g.*, *Alliance for Cmty. Media v. FCC*, 529 F.3d 763, 775 (6th Cir. 2008) (*Alliance for Community Media*) (citing *Iowa Utils. Bd.*, 525 U.S. at 385 ("assignment[ ]" of the adjudicatory task to state commissions did not "logically preclude the [FCC]'s issuance of rules to guide the state-commission judgments"); *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

[71] 47 U.S.C. § 541(a)(1).

for a judicial remedy under Section 621 and did not otherwise expressly reference the agency, the Commission lacked authority to issue the interpretive order.[72] The Sixth Circuit disagreed and, relying on *Iowa Utilities Board*, held that "the FCC possesses clear jurisdictional authority to formulate rules and regulations interpreting the contours of Section 621(a)(1)" and "the statutory silence in Section 621(a)(1) regarding the agency's rulemaking power does not divest the agency of its express authority to prescribe rules interpreting that provision."[73] A similar conclusion was reached more recently by the Fifth Circuit in the challenge to the Commission's *Shot Clock Order*, in which the Commission issued a declaratory ruling interpreting the language of Section 332(c)(7) regarding reasonable time frames for acting on wireless facility siting applications.[74] Relying on *Alliance for Community Media*, the Fifth Circuit concluded that "there is nothing inherently unreasonable about reading § 332(c)(7) as preserving the FCC's ability to implement § 332(c)(7)(B)(ii) while providing for judicial review of disputes under § 332(c)(7)(B)(ii) in the courts."[75]

While adjudicatory proceedings pursuant to Section 253(d) will remain available for specific circumstances on a case by case basis, the Commission can and should adopt rules in this proceeding to settle the patchwork of local requirements that impede deployment.

B. The Commission's and Courts' Initial Interpretation Of Section 253 Correctly Reflected The Deregulatory Intent Of The 1996 Act

Although Section 253 was enacted as a cornerstone of Congress' intention to limit the authority of states and local governments over telecommunications, and despite clear guidance from the Commission in early cases, judicial interpretation and application of Section 253 has

[72] *Alliance for Community Media*, 529 F.3d at 773.

[73] *Id.* at 774.

[74] *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

[75] *Id.* at 251 (internal quotation marks and citations omitted).

not been uniform, particularly in recent cases. As a result, companies such as Crown Castle have encountered increasing barriers from local government demands and requirements. To prevent a parochial patchwork of requirements from thwarting the deployment of critical, advanced technologies and services, the Commission should adopt rules that interpret and implement Section 253 and, in so doing, effectuate Congress' deregulatory vision.

Cases decided by the Commission and the courts shortly after passage of the 1996 Act correctly reflected the intention of Congress to let competition, not parochial local interests and regulations, determine which providers and technologies would successfully compete in the marketplace. The standard adopted in those cases recognized that Section 253(a) does not require the provider to show a complete, "insurmountable" prohibition in order for a local regulation or requirement to run afoul of Section 253. Rather, the Commission and courts gave effect to the language of Section 253(a) that preempts not only local requirements that "prohibit" but also requirements that "have the effect" of prohibiting. For example, in *Classic Telephone, Inc.*, the Commission emphasized that with Section 253 Congress intended to eliminate impediments to deployment by *all* entities.[76] The market, not local regulations, was to determine success in the marketplace:

> As explained in the *Local Competition First Report and Order*, under the 1996 Act, the opening of the local exchange and exchange access markets to competition "is intended to pave the way for enhanced competition in all telecommunications markets, by allowing *all* providers to enter *all* markets." Section 253's focus on State and local requirements that may prohibit or have the effect of prohibiting any entity from providing any telecommunications services complements the obligations and responsibilities imposed on telecommunications carriers by the 1996 Act that are intended to "remove not only statutory and regulatory impediments to competition, but *economic and operational* ***impediments*** as well." *Congress intended primarily*

[76] *Classic Telephone, Inc.*, 11 FCC Rcd. 1308, 13095-96, ¶ 25 (1996) (*Classic Telephone, Inc*).

> *for competitive markets to determine which entrants shall provide the telecommunications services demanded by consumers*, and by preempting under section 253 sought to ensure that State and local governments implement the 1996 Act in a manner consistent with these goals.[77]

In *TCI Cablevision*, the Commission reiterated that Section 253 was intended to limit the authority of local governments, in particular, noting that a "third tier" of regulation that impedes deployment was contrary to Section 253.[78]

In *California Payphone*, the Commission articulated a standard for evaluation of whether a requirement "has the effect" of prohibiting service under Section 253(a). The Commission stated that it considers "whether the Ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[79] Notably, the Commission's *California Payphone* articulation required only that the requirement "inhibit" or "limit" the telecommunications provider—not that it completely bar service in all scenarios. Likewise, the Commission's standard effectuated the intention of Congress by focusing on whether the local requirement limits the ability of any entity to compete in a "fair and balanced" regulatory environment. In other words, new entrants or certain types of providers are not allowed to be targeted with regulations not imposed on others (notably incumbents).

Following the same approach, in the 1999 *Minnesota Order*, the Commission[80] emphasized that Section 253(a) bars any state or local action that *impedes* competitors' use of

---

[77] *Id.* (emphasis added).

[78] *TCI Cablevision*, 12 FCC Rcd at 21441, ¶ 105.

[79] *California Payphone Ass'n*, 12 FCC Rcd 14191, 14206, ¶ 31 (1997) (*California Payphone*).

[80] *Petition of State of Minnesota for Declaratory Ruling*, 14 FCC Rcd 21697 (1999) (*Minnesota Order*).

any possible market entry methods.[81] Indeed, in the *Minnesota Order*, the Commission stated that "section 253(a) bars state or local requirements that ***restrict*** the means or facilities through which a party is able to provide service."[82] Again, the Commission did not require a complete barrier, but rather, focused on any requirements that restrict the means or facilities for providing services.[83]

Court treatment shortly after 1996 similarly recognized that Section 253(a) did not require a complete prohibition of service.[84] Rather, many courts focused on preempting local regulatory schemes that, in combination or on the whole, had the effect of prohibiting entry, including burdensome regulatory schemes that gave local governments unfettered discretion to determine whether a provider could deploy. For example, in *Bell Atlantic-Maryland, Inc. v. Prince George's County*, in the absence of any single provision that explicitly prohibits entry, the court held that "in combination," the totality of the obligations imposed by Prince George's County's telecommunications ordinance violated Section 253(a) by "hav[ing] the effect of prohibiting" the provision of telecommunications services.[85]

---

[81] *Id.* at 21717, ¶ 38.

[82] *Id.* at 21708, ¶ 21 (emphasis added) (citing *Texas PUC Order*, 13 FCC Rcd 3460).

[83] *Id.* at 21709, ¶ 23 (focusing on whether requirement has "***the potential to prevent*** certain carriers from providing facilities-based services" (emphasis added)).

[84] *Iowa Utils. Bd.*, 525 U.S. at 370 (under the 1996 Act, states "may no longer enforce laws that *impede* competition . . . .") (emphasis added).

[85] *Bell Atlantic – Maryland, Inc. v. Prince George's County, Maryland*, 49 F. Supp. 2d 805, 815 (D. Md. 1999), *vacated on other grounds*, 212 F.3d 863 (4th Cir. 2000), *on remand*, 155 F. Supp. 2d 465 (D. Md. 2001). The Fourth Circuit Court of Appeals vacated and remanded the district court's ruling on the grounds that the court should have addressed the state law claims in the case first, as their resolution may have mooted the federal law issues. The Fourth Circuit did not address the merits of the district court's decision. While the district court's decision has no precedential value, it will be discussed in these comments as indicative of at least one court's considered interpretation of Section 253.

In *City of Auburn v. Qwest Corp.*,[86] the Ninth Circuit held that Section 253 is a "virtually absolute" preemption on municipal franchise requirements.[87] It stated that Section 253's "purpose is clear—certain aspects of telecommunications regulation are uniquely the province of the federal government and Congress has narrowly circumscribed the role of state and local governments in this arena."[88] Applying that standard, the court held that the city's requirements, as a whole, had the effect of prohibiting the provision of telecommunications service. In particular, the court emphasized that the burdensome application process and the unfettered discretion left to the city had the effect of prohibiting telecommunications service in violation of Section 253.[89]

In *RT Communications, Inc. v. FCC,*[90] the Tenth Circuit—in a decision affirming the Commission's decision in *Silver Star Telephone Co.*[91]—explicitly rejected the argument that a regulation must be a complete barrier to entry to violate Section 253(a). The court held that "*the extent to which the statute is a 'complete' bar is irrelevant*. § 253(a) forbids any statute which

---

[86] *City of Auburn, et al. v. Qwest Corporation,* 260 F.3d 1160, 1175-76 (9th Cir. 2001) (*City of Auburn*), *overruled by Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571 (9th Cir. 2008) (*Sprint Telephony*). As discussed herein, Crown Castle recognizes that *City of Auburn* was overturned by the Ninth Circuit sitting *en banc*. However, as Crown Castle demonstrates, the Commission should reject the Ninth Circuit's *Sprint Telephony* decision as incorrectly interpreting Section 253.

[87] *City of Auburn,* 260 F.3d at 1175.

[88] *Id.*

[89] *Id.* at 1178-79.

[90] *RT Communications, Inc. v. FCC,* 201 F.3d 1264 (10th Cir. 2000) (*RT Commc'ns*).

[91] *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling,* Memorandum Opinion and Order, 12 FCC Rcd. 15639 (1997), *recon. denied,* 13 FCC Rcd. 16356 (1998) (*Silver Star Telephone Co*).

prohibits or has 'the effect of prohibiting' entry. *Nowhere does the statute require that a bar to entry be insurmountable before the FCC must preempt it*."[92]

The Second Circuit in *TCG New York, Inc. v. City of White Plains*, agreed with the Tenth Circuit's holding that to violate Section 253(a) a prohibition does not need to be complete or "insurmountable."[93] It also followed the Commission's standard that an ordinance runs afoul of Section 253(a) if it "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced regulatory environment."[94]

In *Qwest Corp. v. City of Santa Fe*, the Tenth Circuit reiterated that to establish a Section 253(a) violation, "[a] regulation need not erect an absolute barrier to entry . . . to be found prohibitive."[95] Like other courts, it held that the "cumulative impact" of requirements could be prohibitive.[96] And most notably, it held that Section 253(a) was violated because the challenged requirements gave the city "unfettered discretion" over whether a company could provide telecommunications service.[97]

In *Puerto Rico Telephone Co. v. Municipality of Guayanilla*, the First Circuit joined the Commission, Second Circuit, and the Ninth Circuit, holding that a requirement "does not need to be complete or 'insurmountable' to run afoul of § 253(a)."[98] It has also adopted the Commission's formulation that a requirement has the effect of prohibiting telecommunications if

---

[92] *RT Commc'ns*, 201 F.3d at 1268 (emphasis added).

[93] *TCG NewYork, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002).

[94] *Id.* (quoting *California Payphone*, 12 FCC Rcd. at 14206, ¶ 31).

[95] *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1269 (10th Cir. 2004).

[96] *Id.*

[97] *Id.* at 1270.

[98] *Puerto Rico Telephone Co. v. Municipality of Guayanilla*, 450 F.3d 9, 18 (1st Cir. 2006) (quoting *City of White Plains*, 305 F.3d at 76) (*Puerto Rico Tel*).

it "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[99]

Therefore, as countless courts have agreed, Section 253(a) does not require the provider to show a complete, "insurmountable" prohibition, and the Commission should adopt rules stipulating as such to "promote the deployment of broadband infrastructure."[100]

1. Recent Decisions Take An Improperly Narrow View Of Section 253 And Undermine Competition

Unfortunately, a few courts have issued decisions that conflict with the cases recognizing that Section 253(a) does not require an insurmountable barrier to entry, and those decisions have diminished the impact of Section 253 to help promote deployment and competition, as Congress intended.

In *Level 3 Communications, L.L.C. v. City of St. Louis*,[101] the Eighth Circuit asserted that a company must show "actual or effective prohibition, rather than the mere possibility of prohibition."[102] Although the Eighth Circuit gave lip service to the proposition that a plaintiff need not show a complete or insurmountable prohibition,[103] in its analysis, it rejected Level 3's claims because Level 3 could not show sufficiently specific telecommunications services that it had not been able to provide as a result of the challenged requirements.

The Eighth Circuit's stringent standard was then further tightened by the Ninth Circuit in *Sprint Telephony PCS, L.P. v. County of San Diego*.[104] In *Sprint Telephony*, the Ninth Circuit,

---

[99] *Id.*

[100] *NPRM*, ¶ 100.

[101] *Level 3 Communications, L.L.C. v. City of St. Louis*, 477 F.3d 528 (8th Cir. 2007).

[102] *Id.* at 533.

[103] *Id.* at 534.

[104] *Sprint Telephony*, 543 F.3d 571.

en banc, reversed its earlier *City of Auburn* decision and adopted the standard articulated in *Level 3*.[105] Indeed, the Ninth Circuit went farther, asserting that to succeed in a "facial" challenge under Section 253, a company must show that there is "no set of circumstances" under which the challenged requirement would be lawful.[106] In other words, to succeed, a provider would have to prove an absolute prohibition under all potential circumstances.

The Ninth Circuit was wrong in several respects. First, contrary to the Ninth Circuit's citation, the U.S. Supreme Court has criticized and not followed the "no set of circumstances" test for facial "preemption" challenges.[107] Indeed, the Supreme Court has frequently not followed the *Salerno* standard used by the Ninth Circuit. In *Arizona v. United States*, the majority declined to apply *Salerno*.[108] Second, the criticism in *Sprint Telephony* that *City of Auburn* relied on a mis-quote of Section 253(a) through the use of ellipses also misstates the basis for the Ninth Circuit's standard in *City of Auburn*.[109] *City of Auburn* made clear that its analysis was not based on the "mere possibility" that the challenged requirements "may" have the effect of prohibiting service. Rather, the court looked at the requirements as a whole, stating "our conclusion is based on the variety of methods and bases on which a city may deny a franchise, *not the mere franchise requirement, or the possibility of denial alone*."[110]

---

[105] *Id.* at 577-78.

[106] *Id.* at 579.

[107] *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see* Michael C. Dorf, *Facial Challenges to State & Fed. Statutes*, 46 Stan. L. Rev. 235, 239-40 (1994); *Janklow v. Planned Parenthood, Sioux Falls Clinic*, 517 U.S. 1174, 1175 (1996) (op. of Stevens, J., respecting the denial of petition for certiorari) (noting that "*Salerno's* rigid and unwise dictum has been properly ignored in subsequent cases").

[108] *Arizona v. United States*, 132 S. Ct. 2492, 2500 (2012).

[109] *Sprint Telephony*, 543 F.3d at 576 (criticizing *City of Auburn* use of ellipses).

[110] *City of Auburn*, 260 F.3d at 1176, n.11 (emphasis added) (citing *AT&T Commc'ns of Southwest, Inc. v. City of Austin*, 975 F. Supp. 928 (W.D. Tex. 1997)).

The standard for evaluating Section 253 claims articulated in *City of Auburn*, as well as in *City of Santa Fe* and *City of White Plains*, correctly reflects both the language and purpose of Section 253(a). The narrow reading in *Sprint Telephony* and *Level 3* effectively require a provider to demonstrate that a challenged requirement actually has prohibited the provision of service, or will actually prohibit the provision of all service in all circumstances. In so doing, the courts essentially eliminated the language of Section 253(a) that preempts both requirements that "prohibit" but also those that "have the effect" of prohibiting.

There is no doubt that the decisions by the Eighth and Ninth Circuits have had a significant chilling effect on broadband deployment. Local governments in those Circuits and others have been led to believe that they can impose extensive, burdensome, and discriminatory requirements that effectively prohibit deployment, without concern. Crown Castle has encountered local governments imposing discretionary, burdensome, and time-consuming regulation that effectively allow local governments to pick-and-choose which providers and which technologies enter the market and succeed—precisely the opposite of what Section 253 and the 1996 Act were meant to achieve.

Local governments may argue that anything short of an outright denial is not a "prohibition" under Section 253(a), but that ignores the regulatory scheme that Congress created with Section 253, as a whole, and it ignores the effect of unreasonable or discriminatory local regulations. The narrow focus of *Sprint* and *Level 3* also misses the effect of the inconsistent patchwork of local regulations. Telecommunications networks are designed and built as regional, statewide, and even national level networks. Yet, the current situation is that every neighboring jurisdiction imposes its own regulations. And they often conflict. What one municipality may prefer, its neighbor may prohibit. The "patchwork quilt" of regulation

prevents providers from deploying a network with scale and uniform technology. The Commission recognized this very point in one of its earliest Section 253 cases:

> Each local government may believe it is simply protecting the interests of its constituents. The telecommunications interests of constituents, however, are not only local. ***They are statewide, national and international as well***. . . . [A]n array of local telecommunications regulations that vary from community to community is likely to discourage or delay the development of telecommunications competition. . . . *Such a patchwork quilt of differing local regulations may well discourage regional or national strategies by telecommunications providers*, and thus adversely affect the economics of their competitive strategies.[111]

For all those reasons, the Commission should exercise its role as the expert agency empowered to interpret and enforce the Communications Act to resolve the ambiguity created by the Eighth and Ninth Circuits and clarify the correct interpretation of Section 253(a) through new rules. Indeed, as the Commission recognized in the *Texas PUC Order*, it is obligated to act:

> Section 253 expressly empowers -- indeed, ***obligates*** -- the Commission to remove any state or local legal mandate that "prohibits or has the effect of prohibiting" a firm from providing any interstate or intrastate telecommunications service. ***We believe that this provision commands us to sweep away not only those state or local requirements that explicitly and directly bar an entity from providing any telecommunications service, but also those state or local requirements that have the practical effect of prohibiting an entity from providing service***.[112]

Likewise, Section 706 of the 1996 Act requires the Commission to act to "remove barriers to infrastructure investment."[113]

---

[111] *TCI Cablevision*, 12 FCC Rcd. at 21440-42, ¶¶ 102-106 (emphasis added) (internal quotation marks omitted); *see also Puerto Rico Tel.*, 450 F.3d at 18-19 (recognizing likely impact of gross revenue fees across multiple jurisdictions).

[112] *Texas PUC Order*, 13 FCC Rcd. at 3470, ¶ 22 (emphasis added).

[113] 47 U.S.C. § 1302(a).

C. The Commission Should Define Actions that Effectively Prohibit the Provision of Telecommunications Services

The current situation under the Eighth Circuit's and Ninth Circuit's decisions would force providers to prove, on a city-by-city, location-by-location basis, that local requirements make it impossible to provide any telecommunications services under any circumstances, regardless of the cost, the burden, the delay, or the impact on the ability to design and build a network beyond that local area. The Eighth Circuit's and Ninth Circuit's interpretation has effectively neutered Section 253 and in so doing thwarted the pro-deployment, pro-competitive, deregulatory intent of the 1996 Act.

The deployment of new technologies and competitive services requires a significant capital investment—potentially millions of dollars for each community. Uncertainty resulting from wholly subjective, discretionary local requirements creates so much risk that companies may not even undertake the investment involved in planning for new services in communities that assume they are authorized to deny consent or impose significant burdens on consent. Moreover, the expense of complying with local application and information requirements may alone be prohibitive. Likewise, the cumulative effect of local requirements can create a prohibition of service, even if any one of the requirements, alone, may not completely prohibit service.[114]

1. Subjecting New Entrants To A Different Process Than Other Rights-Of-Way Pole Users Violates Section 253(a)

A significant impediment that Crown Castle encounters around the country is the imposition of new, more burdensome requirements on Crown Castle than was imposed on the ILEC or even prior competitive telecommunications providers. As discussed above, preventing

[114] *See Puerto Rico Tel.*, 450 F.3d at 18-19 (holding that risk of other communities all adopting a fee violates Section 253).

discrimination against new entrants was a primary purpose of Section 253. At a minimum, the Commission should adopt a rule that local regulations that impose different, more burdensome requirements and conditions on new entrants than all other telecommunications providers in the public rights-of-way violate Section 253(a).[115] Such a rule – although stating what should be a fundamental principle – would significantly assist Crown Castle in the deployment of new facilities and services.

2. Moratoria

The Commission seeks comment on whether it should adopt rules prohibiting state or local moratoria on market entry or facilities deployment.[116] As the Commission and multiple courts have recognized, the 1996 Act was intended to promote competitive technologies and prevent local governments from influencing market entry and success.[117] Moratoria are a

---

[115] It is axiomatic that if the requirements are a Section 253(a) violation because they are discriminatory, by definition they are not "competitively neutral" or "nondiscriminatory" management of the public rights-of-way under Section 253(c). *E.g.*, *Zayo Grp., LLC v. Mayor & City Council of Balt.*, No. JFM-16-592, 2016 WL 3448261, at *7 (D. Md. June 14, 2016) ("[T]he purported disparity in treatment between Verizon and its competitors, shows that the City's action may be neither competitively neutral nor nondiscriminatory."); *City of White Plains*, 305 F.3d at 80.

[116] *NPRM*, ¶ 102.

[117] Preamble, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (describing the purpose of the 1996 Act as "[a]n Act [t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies"); *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 371 (1999) (*Iowa Utilities Board*) (the 1996 Act "fundamentally restructures local telephone markets" to facilitate market entry); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 857-58 (1997) ("The Telecommunications Act was an unusually important legislative enactment ... designed to promote competition"). *See also United States Telecom Association v. FCC*, 290 F.3d 415, 417 (D.C. Cir. 2002); *New York & Public Service Comm'n of New York v. FCC*, 267 F.3d 91, 96 (2nd Cir. 2001); *Michigan Bell Tel. Co. v. Climax Tel. Co.*, 202 F.3d 862, 865 (6th Cir.1999); *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 944 (8th Cir.2000) (noting 1996 Act is intended to "jump-start" local competition); *2011 Pole Attachment Order*, ¶ 136.

fundamental barrier to deploying broadband infrastructure in the public rights of way, and the Commission should adopt a rule explicitly preventing such action. Indeed, such a declaration by the Commission would be consistent with the Commission's repeated prior holdings that Section 253 prohibits local governments from discriminating against new entrants or new technologies.

Crown Castle, has often encountered both *de facto* and explicit moratoria imposed by municipalities. For example, in the case of fiber deployment, Crown Castle has often been told that the municipality will not process any applications or permits related to the use of public rights of way until the municipality rewrites its ordinance. Additionally, on occasion, municipalities have enacted explicit moratoria on the deployment of fiber related to small cell networks.

No set of circumstances can justify a moratorium on deployment. It is an explicit prohibition on the ability of companies to provide telecommunications service, in violation of Section 253(a). In order to prevent the use of moratoria by municipalities, the Commission should adopt a rule outlawing moratoria and, at a minimum, codifying its interpretation of Section 253(a) in *California Payphone*: a local requirement prohibits the provision of telecommunications service in violation of Section 253(a) if it "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[118]

3. Delays

The Commission also seeks comment on adopting rules to eliminate excessive delays in negotiations and approvals for right of way agreements and permitting.[119] Indeed, the

[118] *California Payphone*, 12 FCC Rcd at 14206, ¶ 31; *see also Texas PUC Order*, 13 FCC Rcd at 3470, ¶ 22.

[119] *NPRM*, ¶ 103.

Commission asks "[f]or instance, would the Commission adopt a mandatory negotiation and/or approval time period. . . ."[120] As a threshold matter, the Commission should recognize that not all local governments require an "agreement" to access the public rights of way, and indeed, state laws sometimes prohibit local governments from requiring such an agreement.[121] Thus, any rule adopted by the Commission must make clear that it does empower local governments to require an agreement; the rule would only apply if the local government has independent authority to require such an agreement and applies the requirement to all telecommunications providers.

Otherwise, Crown Castle supports the proposal to adopt a shot clock for the negotiation of agreements and/or approval of permits to prevent municipalities from effectively prohibiting the deployment of broadband infrastructure by creating unnecessary delays in violation of Section 253. Crown Castle has been forced to wait months and even years for municipal approval after submitting applications, which effectively prohibits Crown Castle from providing telecommunications services in violation of Section 253(a).[122] Even if the local government eventually grants the application, the damage has already been done. During the delay, Crown Castle has been prevented from competing with ILECs and any other existing provider. In an industry where technology changes constantly and consumers demand immediate access to the most recent technologies and services, delays of a few months, much less years, are unacceptable and can fundamentally harm a company's ability to compete and succeed in the long term and even beyond the particular local jurisdiction. Thus, municipal delay is fundamentally thwarting the purpose of the 1996 Act.

---

[120] *NPRM*, ¶ 103.

[121] *See, e.g.*, Cal. Pub. Util. Code § 7901; Fla. Stat. § 337.401(3)(a); Ga. Code § 46-5-1(a)(2)(A).

[122] *See AT&T Commc'ns of Southwest, Inc. v. City of Austin*, 975 F. Supp. 928 (W.D. Tex. 1997), *vacated on other grounds*, 235 F.3d 241 (5th Cir. 2000).

This concept is well established in case law. In *TCG New York, Inc. v. City of White Plains*, the Second Circuit affirmed the District Court's ruling that the City's unreasonable delay in negotiating a franchise agreement that the city demanded had the effect of prohibiting TCG from providing telecommunications services in violation of Section 253(a).[123] Likewise, in *City of Austin*, the court recognized that the telecommunications marketplace is highly competitive and constantly changing, and as a result, even the slightest delay can cause a provider to lose significant opportunities as compared to those already operating in the market.[124] In *Township of Haverford*, the court held that the challenged ordinance violated Section 253, among other reasons, because there was no guarantee that a franchise application "once submitted, will be processed ***expeditiously***."[125]

The Commission likewise has recognized the potential adverse effects of local government delay. In the second *Classic Telephone* Order, addressing the defendant cities' failure to act under the Commission's first order, the Commission explained:

> If a potential entrant is unable to secure the necessary regulatory approvals within a reasonable time, it may abandon its efforts to enter a particular market based solely on the inaction of the relevant government authority. . . . More specifically, in certain circumstances a failure by a local government to process a franchise application in due course may "have the effect of prohibiting" the ability of the applicant to provide telecommunications service, in contravention of section 253.[126]

---

[123] *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002).

[124] *City of Austin*, 975 F. Supp. at 938.

[125] *Peco Energy Co. v. Township of Haverford*, 1999 WL 1240941, at *8 (emphasis added) (*Township of Haverford*).

[126] *Classic Telephone, Inc, Petition for Emergency relief, Sanctions and Investigation*, 12 FCC Rcd 15619, 15634, ¶ 28; *see also TCI Cablevision*, 12 FCC Rcd. at 21441, ¶ 105 (FCC concerned with "unnecessary delays" caused by local governments).

The Commission should be cautious about imposing a "shot clock" on the grant of right of way permits. In reality, the vast majority of standard right of way permits, particularly for fiber deployment are granted on a ministerial basis within a matter of a few days or perhaps a few weeks. The Commission does not want to inadvertently slow those processes by creating a "shot clock" that may lead local governments to simply fall into taking the entire time. Nonetheless, the Commission should define an outer limit for local government action.

For standard right of way access permits, Crown Castle supports a maximum time of 30 days. Local governments have already issued many such permits to other cable, telecom, and electric utilities over the course of decades. New installations, such as Crown Castle's, do not raise issues that require significant additional time.

For local governments that require, and are permitted to require, a franchise/license/right of way agreement, the maximum reasonable time for local government negotiation of the agreement also should be 30 days. The shot clock should begin immediately upon submission of a written request for access to a right-of-way.

Local governments have no basis for taking any longer. First, if the local government requires an agreement, then it should have one already in place from every other telecommunications provider, including the ILEC. And those agreements are public documents that should be publically available. If the local government does have an agreement with existing providers, it cannot lawfully require one of the new entrant.[127]

[127] *TCG NewYork, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir.2002) (finding that the city violated Section 253 of the Communications Act by requiring a CLEC to pay franchise fees and other forms of compensation as part of a telecommunications franchise while excusing the ILEC from any comparable requirements).

4. Excessive Fees

The Commission seeks comment on whether to adopt rules prohibiting excessive fees and other costs.[128] In many respects, the issue raised in the NPRM are identical to the questions asked in the "Mobilitie Petition" docket.[129] Accordingly, Crown Castle incorporates by reference its comments in that Docket.[130]

A significant issue that the Commission does not appear to focus on is the problem of fees and costs being imposed on new entrants, such as Crown Castle, that are not imposed on the ILEC or other companies that previously deployed telecommunications networks in the rights of way. Crown Castle far too frequently encounters this situation. Some local governments appear motivated to try to profit from the current deployment of telecommunications networks by imposing on new entrants fees that are not imposed on the ILEC or perhaps even prior telecommunications providers.

Accordingly, the Commission should adopt a rule that reiterates its holding in the *Texas PUC Order* that Section 253(a) bars state or local requirements that restrict the means or facilities through which a party is able to provide service, and moreover, that it bars local requirements that impose financial burdens on one set of providers that are not imposed on others.[131] Indeed, the Commission has previously concluded that costs imposed only on new

[128] *NPRM*, ¶¶ 104-105.

[129] *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421.

[130] *See* Comments of Crown Castle International Corp., WT Docket No. 16-421 (filed on Mar. 9, 2017); *See* Reply Comments of Crown Castle International Corp., WT Docket No. 16-421 (filed on Apr. 10, 2017).

[131] *Texas PUC Order*, 13 FCC Rcd at 3466, ¶ 13; *see also Minnesota Order*, 14 FCC Rcd 21708-09, ¶ 21.

entrants are classic barriers to entry.[132] In a 1994 order implementing the 1992 Cable Act, the Commission defined a barrier to entry as "'a cost of producing (at some or every rate of output) which must be borne by a firm which seeks to enter an industry but is not borne by firms already in the industry.'"[133] And the Ninth Circuit has held that "[t]he disadvantage of new entrants as compared to incumbents is the hallmark of an entry barrier."[134] In its *Amicus Curiae* brief in *White Plains*, the Commission asserted that "[d]iscriminatory entry conditions . . . make competitive entry more difficult and unlikely, thereby undermining the local competition Congress sought to foster."[135]

Such a declaration is also supported by multiple courts. For example, the Southern District of New York, in *Montgomery County v. Metromedia Fiber Network, Inc*., held that

> *subjecting new market entrants . . . to a lengthy and discretionary application process, while exempting the incumbent provider. . . from such process, has the effect of prohibiting the provision of telecommunications services*, because it "materially inhibits or limits the ability" of the new entrant "to compete in a *fair and balanced* legal and regulatory environment."[136]

Similarly, the First Circuit explained that

> Congress apparently feared that some states and municipalities might prefer to maintain the monopoly status of certain providers, on the belief that a single regulated provider would provide better or more universal service. Section 253(a) takes that choice away

---

[132] *See Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 7442, Appendix H at 7621-22, ¶ 29 (1994).

[133] *Id.* (quoting G. Stigler, The Organization of Industry 67 (1968)).

[134] *Los Angeles Land Co. v. Brunswick Corp.*, 6 F.3d 1422, 1428 (9th Cir. 1993).

[135] Brief for Federal Communications Commission and the United States as Amici Curiae, *TCG N.Y., Inc. v. City of White Plains*, No. 01-7213, 2001 WL 34355501, at *8 (2d Cir. filed June 13, 2001) ("FCC Br. in *City of White Plains*").

[136] *Montgomery County v. Metromedia Fiber Network, Inc*., 326 B.R. 483, 494 (S.D.N.Y. 2005), *vacated and remanded pursuant to joint motion* (05-4123) (Aug. 31, 2006) (first emphasis added).

> from them, thus preventing state and local governments from standing in the way of Congress's new free market vision.[137]

Accordingly, there is ample support for a Commission declaration that local fees that are imposed only on new entrants in the right-of-way violate Section 253.[138]

5. Other Unreasonable Conditions and Actions Imposed by Local Governments

Additionally, Crown Castle has encountered some cities that have used access to the right-of-way as a bargaining chip for other unreasonable demands, such as free telecommunications service or "charitable donations" even where charging fees for use of the right-of-way are specifically prohibited by law. One jurisdiction stated that if Crown Castle's network were to be approved it would have be required to install police video surveillance cameras for the City to utilize for law enforcement purposes. Other jurisdictions have required Crown Castle construct additional conduit for municipal utility projects while others simply seek free access to fiber strands. Recently one jurisdiction offered discounted permitting fees with a sizeable charitable donation to the municipality's charitable organization.

6. Other Prohibitive Local Requirements

The Commission also seeks comment on other issues where the Commission might adopt rules to preempt local requirements that have the effect of prohibiting the provision of telecommunications services.[139] One issue the Commission identifies is whether the

---

[137] *Cablevision of Boston, Inc. v. Pub. Improvement Comm'n of City of Boston,* 184 F.3d 88, 98 (1st Cir. 1999).

[138] As noted above, such discriminatory requirements would violate not only Section 253(a), but would not be competitively neutral and nondiscriminatory, as required by Section 253(c).

[139] *NPRM*, ¶ 108.

Commission should adopt rules addressing the transparency of local application processes.[140] Crown Castle supports such a rule.

Too often, a significant impediment to deployment is the lack of clarity in a local government's requirements. Crown Castle too frequently encounters situations where there is no clear articulation of what the local government requires. A related, but even more problematic problem is situations where the local government either refuses to follow its own requirements or arbitrarily changes them as applied to Crown Castle. A Commission rule clarifying that local governments must make their right of way access rules readily and publically available, on the local government's internet site, would help remedy these situations that impede the deployment of telecommunications, and it would help prevent local governments from discriminating against new entrants with unwritten, arbitrary requirements.

D. Broadband Deployment Advisory Committee

Crown Castle is supportive of the efforts taken by the Commission to increase collaboration among federal, state, and local governments and industry. Crown Castle is hopeful that the Commission's newly-formed Broadband Deployment Advisory Committee ("BDAC") will lead to collaborative broadband deployment policies that promote the efficient deployment of broadband infrastructure.[141] Crown Castle looks forward to eventual reports and conclusions from BDAC on the state of broadband deployment.

IV. CONCLUSION

Crown Castle appreciates the Commission's attention to the important issues raised in the NPRM and urges the Commission to adopt the proposed amendments addressed in these

---

[140] *Id*.

[141] *FCC Announces the Membership and First Meeting of the Broadband Deployment Advisory Committee*, GN Docket No. 17-83, Public Notice, DA 17-328, 32 FCC Rcd 2930 (Apr. 6, 2017).

comments to help speed the deployment of competitive services and technologies to consumers.

Respectfully Submitted,

/s/ Kenneth J. Simon
Kenneth J. Simon
Senior Vice President and General Counsel

Monica Gambino
Vice President, Legal

Robert Millar
Associate General Counsel

CROWN CASTLE
INTERNATIONAL CORP.
1220 August Drive, #600
Houston, Texas 77057
724-416-2000

June 15, 2017